

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI, ex rel. ST. JOSEPH SCHOOL DISTRICT,

Appellant,

v.

**MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION;
Respondent and W.B. and J.B. ON BEHALF OF T.B.,**

Respondent.

DOCKET NUMBER WD70847
**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

Date: March 30, 2010

Appeal from:
Cole County Circuit Court
The Honorable Jon E. Beetem, Judge

Appellate Judges:
Division One: Lisa White Hardwick, P.J., James M. Smart, Jr. and Alok Ahuja, JJ.

Attorneys:
Linda J. Salfrank, Esq., William J. Hatley, Esq., and Kristina V. Giddens, Esq., Kansas City, MO, for appellant.
Glen D. Webb, Esq., Jefferson City, MO and Stephen O. Walker, Esq., Saratoga Springs, UT, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

STATE OF MISSOURI, ex rel. ST. JOSEPH SCHOOL DISTRICT

Appellant,

v.

**MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY
EDUCATION; Respondent and W.B. and J.B. ON BEHALF OF T.B.,**

Respondent.

WD70847

COLE COUNTY

Before Division One Judges: Lisa White Hardwick, P.J., James M. Smart, Jr. and Alok Ahuja, JJ.

W.B. and J.B. (collectively “Parents”) asserted a claim under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. (the “IDEA” or “Act”), contending that the St. Joseph School District was denying their son the special education services to which he was entitled under the Act. The School District claimed that Parents entered into a settlement agreement that resolved their claims during informal negotiations, and prior to their scheduled due process hearing before an administrative hearing panel appointed by Respondent Missouri Department of Elementary and Secondary Education. The School District filed a Motion for Enforcement of Settlement Agreement, which the Panel overruled on the basis that it lacked authority to consider the motion. The School District then filed this action in the circuit court, seeking a writ of mandamus ordering the Panel to decide on the merits its motion to enforce the purported settlement. The circuit court denied relief, and the School District appeals.

REVERSED AND REMANDED.

Division One holds:

Mandamus is available where a court or administrative agency refuses to exercise the authority it possesses to decide a particular matter. Here, § 162.961.1 provides that a due process hearing panel shall decide “any matter relating to . . . the provision of a free appropriate public education of the child.” A circuit court cannot address issues subject to administrative resolution under § 162.961.1 unless those issues have first been presented to, and decided by, a due process hearing panel.

Here, the parties dispute whether the School District and Parents entered into a binding settlement agreement resolving Parents' claim that their son was not receiving the educational services to which he was statutorily entitled. If enforced, the terms of the purported settlement would govern the special education services Parents' son will receive from the School District. Giving § 162.961.1 its plain and ordinary meaning, the parties' dispute as to the existence and enforcement of the settlement would thus appear to be a "matter relating to . . . the provision of a free appropriate public education of the child," subject to resolution by a hearing panel constituted by the Department. This result is confirmed by the Southern District's decision in *Neosho R-V School District v. McGee*, 979 S.W.2d 537 (Mo. App. S.D. 1998), and by federal caselaw interpreting the closely similar language of the corresponding federal statute.

The circuit court itself recognized that "only the Due Process Hearing Chair can rule on a Motion to Enforce a Settlement." The court nonetheless denied relief because it concluded that the Panel had in fact addressed the merits of the School District's claim that a settlement existed. We cannot agree. The letter order issued by the Panel's chair indicated that, after researching the issue, he was unable to find any authority supporting the Panel's power to resolve the School District's motion to enforce settlement. The Panel's chair reiterated this position while the mandamus proceeding was pending in circuit court, and in its briefing in this Court the Department has acknowledged that the Panel did not address the merits of the School District's motion to enforce, instead concluding that it lacked jurisdiction to do so.

The circuit court's judgment is accordingly reversed, and the case remanded to that court with directions to issue a writ of mandamus requiring the Panel to address the merits of the School District's motion to enforce settlement.

Opinion by: Alok Ahuja, Judge

March 30, 2010

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